

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>STELLA M. FREE</b>	)	
Claimant	)	
VS.	)	
	)	
<b>CITY OF EMPORIA</b>	)	Docket No. 250,401
Respondent	)	
Self-Insured	)	

**ORDER**

Respondent appeals the January 13, 2000, Order of Administrative Law Judge Brad E. Avery. Claimant was granted temporary total disability compensation and medical treatment for an injury suffered on June 22, 1998, while walking outside respondent's municipal building. The Administrative Law Judge found claimant's accidental injury did arise out of and in the course of her employment with respondent.

**ISSUES**

Did claimant suffer accidental injury arising out of her employment with respondent on the date alleged? Respondent acknowledges claimant's accidental injury occurred in the course of her employment.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board finds the Order of the Administrative Law Judge should be affirmed.

Claimant suffered accidental injury on June 22, 1998, when she tripped and fell while walking on the sidewalk around respondent's municipal building. The sidewalk is owned, maintained and controlled by respondent. Claimant acknowledged that the accident occurred while she was on break. However, claimant was being paid while on break. In addition, claimant, at times, used the break time for work activities such as delivering documents to other city departments. Claimant further testified that walking around the building on break time was a common practice among respondent's employees.

The Appeals Board finds claimant's accidental injury did arise out of her employment with respondent. First, claimant was being paid at the time of the injury. See Vaughn v. City of Wichita and Kansas Workers Compensation Fund, WCAB Docket No. 184,562 (February 1998). In addition, the activity was, to a certain degree, a common practice among employees, as claimant testified not only she, but many of respondent's employees took the opportunity to walk around the building during their break time. See Wallace v. Sitel of North America, WCAB Docket No. 242,034 (October 1999). In addition, the break time was occasionally used for the benefit of the employer as claimant occasionally made deliveries both to the city building and the Sheriff's Department during her break time. At times, claimant would even be called back to her desk, cutting her break short. See Weiner v. VSR Financial Services, Inc., WCAB Docket No. 189,203 (January 1996). Finally, the area where claimant fell was a sidewalk owned, controlled and maintained by respondent.

For the above reasons, the Appeals Board finds claimant has proven accidental injury arising out of her employment with respondent, and the Order of the Administrative Law Judge should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the January 13, 2000, preliminary hearing Order of Administrative Law Judge Brad E. Avery should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 2000.

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BOARD MEMBER

c: Michael G. Patton, Emporia, KS  
Michael J. Unrein, Topeka, KS  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director